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**COMMISSIONER UNDER EMPLOYEE'S COMPENSATION ACT, 1923
(DISTT. SOUTH-EAST)
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI
LABOUR WELFARE CENTER, BAL MUKUND KHAND
GIRI NAGAR, KALKAJI NEW DELHI-110019**

Old No. CEC/SD/D/53/2019

New No. CEC/SED/D/31/2022 /3022-3028

Dated 13/06/2025

In the matter of:

Smt. Aashiya W/o Lt. Nasrat Ali
Shanno W/o Lt. Hasrat Ali
Both R/o Hindor Badaun
Uttar Pradesh- 243643

o/c

.....Claimant

Adv. Karan Bal
Chamber No. 164-165, Western Wing,
Tis Hazari Court, Delhi-110054.

.....Claimant's Counsel

V/s

Sh. Brahm Singh S/o Sh. Mehar Chand
R/o B-322, Village Tughlakabad
New Delhi-110044

.....Respondent No. 1

Adv. Lalit Mohan Singh
Chamber No. 362, Saket Court
New Delhi

.....Respondent No. 1 Counsel

M/s Nice Cargo Movers
Ground Floor, A-608, Vishwakarma Colony
MB Road, New Delhi-110001

.....Respondent No. 2

M/s The Oriental Insurance Co. Ltd.
206, 2nd Floor, 57 Manjusa Building,
Nehru Place, New Delhi- 110019

.....Respondent No. 3

Adv. Mohit Arura
Hailey Lane, New Delhi-110001

.....Respondent No. 3's Counsel

ORDER

1. This order shall dispose of the claim petition filed on 31.10.2019 by Smt. Aashiya and Smt. Sanno (hereinafter referred to as claimants) stating that deceased Lt. Nasrat Ali was working as a 'Drive' with R-1 who is also the owner of R-2, met with an accident on 24.08.2019 while driving trolley No. HR38Z-7062 while going from Delhi to Hisar. The





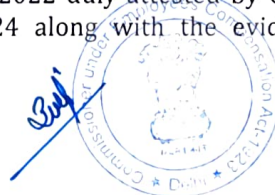
accident took place near Police Station Baas, Police Station Hansi UP as he was hit from behind by another truck. He received serious injury and was taken to private hospital and then to AIIMS Trauma Centre, where he died on 03.09.2019. He was of the age of 33 years and drawing salary of Rs.15,000/- per month. The deceased was the contributor of the entire income in the family and the petitioner were fully dependent on him. The employer was having knowledge of the accident and they have requested many times to pay death compensation but the respondent has not paid the same. They claimed an amount of Rs. 20,00,000/- due to death, loss of dependency, mental torture and shock. R-1 and R-2 jointly and severally liable to pay compensation amount along with interest and penalty. Along with the claim, the claimant has filed her affidavit, court fees exemption application GD entry at P.S. Baas, Insurance Policy of R-3 i.e. Oriental Insurance Co. Ltd. of the vehicle having policy no. 272500/31/2020/74 for the period 01.04.2019 to 31.03.2020, Vehicle RC, driving license of the deceased, dead body hand over certificate, aadhar card of Aashiya and Shanno, post-mortem report, and Vakala Nama of the Counsel.

2. Upon summoning the R-1 appeared through the Counsel Lalit Mohan Singh and filed their joint WS of R-1 and R-2 on dated 27.02.2021. In the said WS, the R-1/R-2 stated that the present case is not maintainable and liable to be dismissed because it is filed on false, incorrect and misleading facts. As regards, the fact of the accident, he accepted that the accident occurred in the Vehicle No. HR-38Z-7062 when it was going from Delhi to Hissar at a place called Garhi village in the PS-Bass of District Hansi, U.P. When the said vehicle was hit from behind, the deceased was taken to the hospital for first-aid and thereafter referred to AIIMS Hospital, Delhi where he died on 03.09.2019.
3. Thereafter, number of notices was issued for summoning of respondents on various dates of hearings i.e. 09.03.2021, 24.03.2021, 13.04.2021, 04.05.2021, 11.08.2021, 06.09.2021, 27.09.2021. Lastly, the R-3 represented by Adv. Mohit Arura appeared and filed their WS on dated 27.09.2021 stating therein that claimant has failed to prove employee-employer relationship between the R-2 and the deceased. No record is filed to show that Nasrat Ali was the employee of vehicle owner/insured, no proof of drawing salary of Rs.15,000/- is placed on record. As per the insurance policy, the R-2 has not insured his driver and therefore there is no liability of the insurance company. The R-3 has accepted that they have insured R-1/R-2 through an insurance policy no. 272500/31/2020/74 for the period 01.04.2019 to 31.03.2020. The maximum limit as per the policy for owner/driver is Rs.2,00,000/- only. In the para-wise reply on merit, most of the contents of the claim petitions is denied by the R-3. The WS is signed by Sh. Davender Kumar, Sr. Divisional Manager of R-3, they have placed on record terms & conditions of the Insurance policy and vakalatnama along with the WS.
4. In the rejoinder filed by the claimant upon the WS of R-1/R-2 filed on 25.10.2021, it is stated that all the contents of the WS is false, wrong and incorrect and hence denied by her. In the rejoinder filed by the claimant upon WS of R-3 25.10.2021, it is stated that all the contents of the WS is false, wrong and incorrect and hence denied by her.
5. On dated 25.10.2021, following issues were framed in this case:
 - i. Whether there exists employer-employee relationship between the respondent and the deceased (Nusrat Ali)?





- ii. Whether the accident arose out of and during the course of employment with the Respondent?
 - iii. And if yes, to what amount the claimant are entitled to and what directions are necessary in this regard?
 - iv. Relief.
6. Respondents stopped appearing after framing issues and therefore summons was issued to the respondents for their appearance on 20.12.2021, 16.03.2022, 19.04.2022, 25.04.2022.
 7. Evidence by affidavit of Smt. Aashiya (wife of deceased) was filed on 29.11.2021 Smt. Aashiya was chief examined on 25.04.2022. In the evidence, the claimant relied upon documents such as copy of GD report exhibit PW-1/1, copy of Post mortem report and dead body receipt exhibited as PW-1/2, copy of aadhar card of Smt. Aashiya exhibited as PW-1/3, copy of aadhar card of Smt. Shanno exhibited as PW-1/4, copy of aadhar card of deceased(Nasrat Ali) exhibited as PW-1/5, copy of driving license of deceased Nasrat Ali exhibited as PW-1/6.
 8. After tendering the evidence 25.04.2022, the right of respondent to cross examine the claimant was closed. On 17.05.2022, the R-1/R-2 filed application under Order 18 Rule 17 of CPC for recalling/re-examination of CW-1 i.e. Aashiya. On 02.06.2022 and 11.07.2022, the claimant sought adjournment for filing reply on the re-examination of claimant application. On 04.08.2022, the application of R-1 & R-2 was dismissed and matter was fixed for evidence of R-3. On 01.09.2022, the R-3 was directed to file fresh evidence because the evidence was notarized in December, 2021 and the same has become invalid. On 22.09.2022, R-3 moved application for giving them opportunity duly examine the claimant Smt. Aashiya, this application was allowed in the open Court on 11.10.2022 after hearing all the parties by payment of cost of Rs.1000/- upon R-3. On 02.11.2022, the R-1 and R-2 again moved application for re-calling of witness for the purpose of cross examination of Aashiya. This application was also allowed in the open Court after hearing both the parties subject to the cost of Rs.2000/- each.
 9. Smt. Aashiya was cross examined by the Ld. Counsel Sh. Lalit Singh of R-1 and Sh. S.M. Prasad from R-3 on 02.11.2022. In the cross examination, Smt. Aashiya stated that her husband was Md. Nasrat Ali and she has filed her affidavit one year ago. She is 25 years of age and without any children. Her husband was driver driving the vehicle of Brahm Singh. She has no document to file regarding her husband employment with Brahm Singh and her salary records. Salary was paid in cash. Her husband got accident in Aug, 2019. She does not know the name of the employer's company where her husband was working. She does not remember the vehicle no. of the truck. She denied all the negative suggestions given by the R-1/R-2 counsel Adv. Sh. Lalit Singh and R-3 counsel Adv. S. M. Prasad. On 02.11.2022, the petitioner evidence was closed and matter was fixed for RE.
 10. Cost imposed upon the respondents were paid on 08.12.2022. Evidence by way of affidavit of Sh. Brahm Singh on dated 08.12.2022 duly attested by Oath Commissioner. The R-1 was chief examined on 11.07.2024 along with the evidence, he has filed





documents such as driving license of Neeraj Kumar Singh exhibited as RW-1/1, aadhar card of Neeraj Kumar Singh exhibited as RW-1/2, copy of insurance exhibited as RW-1/3, copy of permit exhibited as RW-1/4, copy of fitness exhibited as RW-1/5.

11. Sh. Brahm Singh i.e. R-1 was cross examined by Sh. Roshan Lal, Ld. Counsel of the claimant on 11.07.2024 in which he stated that he is only 8th standard pass and knows only Hindi. He is running his company in the name of M/s Nice Cargo Movers since 1995, he exactly does not know how many employees is employed by his firm as he has not brought any register to show his employee details. He admitted that his vehicle was engaged in accident death occurred on 03.09.2021. He has not filed any complaint in the Police Station or RTO or any Authority. He said that his vehicle was fully insured as per policy exhibited as RW-1/3 having permit at RW-1/4 and RC and fitness at RW-1/5. He again stated that he has not brought any documentary proof to show that Sh. Neeraj Kumar was working with him for past 5-10 years but at presently, he is not presently working with him. The R-1 has stated in his evidence affidavit that Sh. Neeraj Singh was officially the driver of the said vehicle owned by him and he doesn't know how Sh. Nusrat Ali was driving the said vehicle on the date of accident as he never knows Sh. Nusrat Ali.
12. Evidence by way of affidavit was filed by R-3 through its witness Sh. Vikas Verma, Assistant Manager, Divisional Office was filed on 08.12.2022 duly attested by Oath Commissioner dated 22.09.2022.
13. Written arguments were filed by the petitioner on dated 13.05.2024 in which they repeated the contents of the claim and reaffirmed that the claimants Smt. Aashiya (wife) and Smt. Sanno (Mother) being the LRs both are entitled for death compensation, funeral interest & penalty total amounting to Rs.18,44,421/-
14. Written arguments were filed by R-1 and R-2 on 07.10.2024 wherein they submitted that the entire claim is false and not maintainable and liable to be rejected because no action arise in favour of R-1 and R-2. The claimant has failed to prove employer and employee relationship with the R-1 and R-2. No record was produced by the petitioner to exhibit that Sh. Nasrat Ali was the employee of R-1 and R-2 on the offending vehicle no. HR38Z-7062. No documents related to salary of Rs.15,000/- is filed by the claimant. To the cross examination, R-1 stated that Neeraj Kumar was working with him for past 5-10 years and presently not working. It shows that Nasrat Ali was never the employee at the time of accident in the said vehicle.
15. The claimant side on 07.10.2024 has filed certain documents as received from RTI of PS-Bass of District Hansi which includes GD Entry No. 034 dated 27.08.2019 done by ASI Bijender Singh, postmortem report issued by AIIMS, Delhi.
16. The R-3 despite giving opportunity to file written arguments did not file the same till the last day of hearing.
17. Oral arguments were heard on 18.09.2024, 07.10.2024, 13.11.2024 and 09.12.2024. Proceedings were concluded on order.
18. In view of above-mentioned contexts, following are the vital facts which is highlighted beneath which have appropriate relevance with the case:





- a. The claim was filed by 2 petitioners Smt. Aashiya and Smt. Sanno in Oct. 2019 against 3 respondents, R-1 and R-2 are employer and the R-3 being insurance company.
- b. As per the claim, the deceased died while taking the treatment at AIIMS Hospital, Delhi on dated 03.09.2019 and it is alleged that the accident occurred while he was driving the vehicle of R-1 which is insured by R-3.
- c. The R-1 and R-2 has accepted the fact of the accident but did not accept Nusrat Ali as his driver.
- d. The R-3 has accepted that the insurance policy existed in the name of R-1/R-2 but said that the claim is not maintainable against them because the employment relationship has not been proved, nor any document has been filed in this regard.
- e. In the rejoinder, there are simple denial of R-1/R-2/R-3 reply.
- f. In the cross examination, Smt. Aashiya has said that she has no proof regarding employment of her deceased husband with the R-1.
- g. In the cross examination and evidence affidavit, Sh. Brahm Singh has denied that Nusrat Ali was his official driver of his vehicle in which accident took place leading to death of Nusrat Ali.
- h. The R-3 witness Sh. Vikas Verma after filing evidence stopped appearing since 09.03.2023 and therefore, the RE stage was closed as witness was not chief/cross examine.
- i. After giving repeated opportunities, the R-3 did not file any arguments, nor participated in oral arguments. The claimant on 07.10.2024 has filed certified copy from PS Baas which is RTI reply along with the GD entry of 27.08.2019 and post mortem report.
- j. As per the GD Entry made by ASI Bijender Singh, it is clear that the accident vehicle HR-38Z-7062 was owned by Sh. Brahm Singh and Sh. Nasrat Ali S/o Sh. Hasrat Ali driver of the said vehicle suffered injury while he was driving the said vehicle on 24.08.2019 at 04:30 AM who was taken to the Hospital in Ambulance.

Findings:

Although, the claimant has not produced any records of employer-employee relationship, the same is considered to exist as per the report of ASI Sh. Bijender Singh GD Entry made on 27.08.2019. After considering the documents on record, reply and arguments of the employer, the CEC is of the considered view that all the issues framed in this case is decided against the respondents and in favour of the claimant. Hence, the claimant Smt. Aashiya & Ors. are found to be entitled for death compensation, along with interest, penalty, funeral expenses as per the provisions laid down under the Act. Since, the vehicle of the employer R-1/R-2 was insured by R-3 and therefore, the liability of Employer i.e. R-1/R-2 is being shifted to R-3 as the insurance has indemnified the same. The death compensation





along with interest, funeral and which is the liability of the employer i.e. R-1/R-2, is in this case is required to be paid by the insurance company i.e. R-3.

19. As per the Act, the death compensation is calculated on the basis of age and relevant factor of the deceased employee. In this case, no salary record of deceased employee Late Sh. Nasrat Ali is available in case file, the same is restricted to Rs.8000/- as per the maximum prevailing wage limit notified by the Government under the Act in respect of accident occurred on 24.08.2019. The age of the claimant is taken as 33 years on the basis of aadhar card and the age factor of 33 years is 201.66 as per Schedule IV of the Act.

Calculation of Principal Amount in respect of deceased employee Late Sh. Nasrat Ali:

As per Section 4(1)(a) of the Act in this case death of an employee, claim amount is calculated as under:

$$\begin{aligned} & 50\% \text{ of monthly wages} \times \text{age factor} \\ & = 50/100 \times 8000 \times 201.66 = \text{Rs.}8,06,640/- \end{aligned}$$

Since, the liability has been shifted from R-1/R-2 to R-3, the Insurance Company is held liable to pay the principal amount of Rs.8,06,640/- (Eight Lakhs Six Thousand Six Hundred Forty)

Calculation of Interest:

Apart from above, since the employer/insurance company has failed to release the entitled death compensation amount within specified period as mentioned in the Act i.e. within one month from date of accident i.e. 24.08.2019. Therefore, the respondents are also liable to pay interest @ 12% of the principal amount of Rs.8,06,640/- as per section 4A(3)(a) of the Act. The said interest is calculated w.e.f. 25.09.2019 till 09.12.2024 (the date on which proceedings were concluded for decision). The interest amount for the default period (05 years 02 months 18 Days) therefore comes to Rs.5,04,957/- which the respondents have to deposit along with the principal amount.

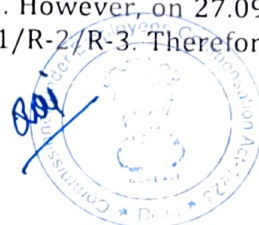
Since, the liability has been shifted from R-1/R-2 to R-3, the Insurance Company is held liable to pay the interest of Rs.5,04,957/- (Five Lakhs Four Thousand Nine Hundred Fifty-Seven Only)

Calculation of Funeral Expenses:

Since, the liability has been shifted from R-1/R-2 to R-3, the R-3 is also held liable to pay the funeral expenses of Rs.5000/- as mentioned in the Act.

Calculation of Penalty:

In this case, show cause notice was issued by the then CEC Sh. Amardeep u/s 4A(3)(b) to all the respondents for filing their reply on 27.09.2021. However, on 27.09.2021 no reply on interest/penalty/for delayed payment was filed by R-1/R-2/R-3. Therefore, the CEC is of





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the opinion that penalty amount should be imposed upon both R-3 (Insurance Company) and R-1 who is the owner of the firm R-2 (Insured Employer) @ 25% each for defaulting and not paying compensation amount within the due date of accident/death. There is no record in the case file which could show that accident report was ever filed by the Employer to the Insurance Company. Also, no record is available to show the efforts made by the insurance company in completing investigation/survey report of the accident and releasing vehicle own damage/death compensation amount in favour of the employer/deceased family. The R-1/R-2 as well as R-3 is liable to deposit penalty of Rs.2,01,660/- each as per the section 4A(3)(b) of the Act.

20. In view of above, the petition is decided in favour of the LR's of the claimant - Smt. Aashiya & Ors. Accordingly, the Respondent no. 3 i.e. M/s Oriental Insurance Co. Ltd. is directed to pay "the full of the principal amount, interest, funeral expenses, 25% penalty all total amounting to Rs.15,18,257/- (Rupees Fifteen Lakhs Eighteen Thousand Two Hundred Fifty-Seven Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order. Similarly, the R-1/R-2 is directed to deposit 25% penalty i.e. Rs.2,01,660/- in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.
21. It is pertinent to mention that failure to deposit the aforesaid amount by R-1/R-2 and R-3 within 30 days of passing of this order, shall attract the recovery proceedings against R-1/R-2 and R-3 as per the provisions of the EC Act. In case the ordered amount is not deposited by R-1/R-2 and R-3 within 30 days of passing of this order additional interest till the period of deposit shall be added in the amount mentioned in the above Para.
22. With this order, R-1 i.e. Sh. Brahm Singh, R-2 i.e. M/s Nice Cargo Movers and R-3 i.e. M/s Oriental Insurance Co. Ltd. are hereby given show cause to give their explanation as to why penalty @ 50% should not be imposed upon each of them for making delay in the payment of death compensation amount u/s 4(A)3(b). All have to appear in person or through their AR on next date of hearing fixed for **04.09.2025 at 10:30 AM.**

Given under my hand and seal of this 13th day of June, 2025.

(U.K. SINHA)
COMMISSIONER UNDER
EMPLOYEE'S COMPENSATION

